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*Attorney for Plaintiff / Plaintiff Pro Se*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**JAMES J. NICITA, a resident of Oregon**

**Plaintiff,**

**v.**

**DANIEL W. HOLLADAY, in his  
individual capacity; in his official  
capacity as mayor of the City of Oregon  
City, Oregon, a municipal corporation;  
and in his official capacity as a  
commissioner of the Urban Renewal  
Commission of Oregon City,**

**THE CITY OF OREGON CITY, a  
municipal corporation,**

**and**

**THE URBAN RENEWAL AGENCY, an  
agency of the City of Oregon City,**

**Defendants.**

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**Case No. 3:19-cv-01960-YY**

**Plaintiff's Notice of  
Supplemental Authority**

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### PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

As supplemental authority in support of his response to Defendants' motion to dismiss, Plaintiff respectfully submits the following authority issued after the Parties submitted their briefing as of June 1, 2020.

On September 1, 2020, the Ninth Circuit Court of Appeals decided *Endy v. County of Los Angeles*, 975 F.3d 757 (9th Cir. 2020). This case undermines Defendants' motion to dismiss Plaintiffs' First Amendment retaliation claim, and in particular, Defendants' reliance on their primary authority, *Mulligan v. Nichols*, 835 F.3d 983 (9th Cir. 2016). At p. 18 of their motion, Defendants cite p. 989 of *Mulligan* for the proposition that Defendant Holladay did nothing that resulted in the deprivation of Plaintiff's "rights or benefits," or that "punish[ed] Plaintiff."

*Endy* establishes that Plaintiff's reputation is a protected "right" under the U.S. Constitution. "A liberty interest may be implicated 'where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him.'" *Id.*, at 764, citing *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971).

*Endy* further establishes that reputational harm is actionable "when a plaintiff suffers stigma from governmental action plus alteration or extinguishment of 'a right or status previously recognized by state law.'" *Endy*, at 764, citing *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1185 (9th Cir. 2009) (quoting *Paul v. Davis*, 424 U.S. 693, 711, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976)). In Oregon, Plaintiff's right to his reputation is established in Or. Const. Art. I Sec. 10: "[E]very man shall have remedy by due course of law for injury done him in his...reputation."

Under *Endy*, Plaintiff's allegations in his First Amended Complaint (¶¶ 35, 43, 57-65)

that Holladay defamed him are sufficient to establish that Holladay injured Plaintiff's reputation, and thereby violated Plaintiff's reputation, in retaliation against Plaintiff's protected speech and exercise of the right to petition for redress of grievances. This states a claim for First Amendment retaliation.

Also as supplemental authority, Plaintiff attaches Clackamas County Clerk's official certification of the recall of Defendant Holladay from the office of mayor of Oregon City on November 10, 2020. The recall and circumstances surrounding the recall provide evidence in support of Plaintiff's Fifth Claim for Relief, Intentional Infliction of Emotional Distress, namely, that Holladay's pattern of abusive behavior towards citizens were acts consisted of extraordinary transgressions of the bounds of socially tolerable conduct." (First Amended Complaint, ¶ 75.) It also speaks to the "special relationship" between a mayor and citizens. (*Id.*)

DATED this 7th day of April, 2021.

Respectfully submitted,

s/ James J. Nicita

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**OREGON  
CITY**

**Office of the City Recorder**

625 Center Street | Oregon City OR 97045  
Ph (503) 657-0891 | Fax (503) 657-7026

October 6, 2020

***Delivered via email on October 6, 2020***

Andrew Jones  
Clackamas County Elections  
1710 Red Soils Court, Ste. 100  
Oregon City, OR 97045

Re: City of Oregon City Calling for a Special Recall Election on November 10, 2020

Dear Andrew:

The City of Oregon City would like to submit the enclosed materials certifying the Recall process has been followed and the required 2,400 valid Oregon City elector signatures have been collected and verified. The elected official was provided five (5) days after the petition qualified to the ballot to resign in writing or file the SEL 352 Statement of Justification. The elected official did file the SEL 352 Statement of Justification on October 6, 2020 at 3:37 p.m.

Now the City is calling for a Special Recall Election on November 10, 2020 and on the ballot will be the following question:

Do you vote to recall Dan Holladay from the office of Mayor?

Enclosed you will find copies of the following:

- SEL 353 Cover Sheet filed from the Chief Petitioner
- Letters to both the Chief Petitioner and the Elected Official certifying the Recall Petition
- SEL 352 Statement of Justification from the Elected Official

If you have any questions on these matters, please do not hesitate to contact me at 503-496-1505.

Sincerely,

Redacted

Kattie Riggs  
City Recorder – City of Oregon City  
Election Official

## Cumulative Results Report

Clackamas County

## Official Results

Official Ballots

Oregon City: Recall Election

Registered Voters

13611 of 26259 = 51.83%

Precincts Reporting

7 of 7 = 100.00%

Run Time 4:04 PM  
Run Date 11/30/2020

11/10/2020

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## City of Oregon City: Recall 2020-01

Choice	Party	Vote-by-Mail		Total	
Yes		9,253	68.04%	9,253	68.04%
No		4,347	31.96%	4,347	31.96%
Cast Votes:		13,600	100.00%	13,600	100.00%
Undervotes:		10		10	
Overvotes:		1		1	

\*\*\* End of report \*\*\*



**CERTIFIED COPY OF THE ORIGINAL  
SHERRY HALL, COUNTY CLERK**

BY: Sherry Hall

**CERTIFICATE OF FILING AND SERVICE**

I certify that on April 7, 2021, I filed the foregoing *Notice of Supplemental Authority* with the U.S. District Court of Oregon via the Court's electronic filing system, and served Defendants Daniel W. Holladay, City of Oregon City, and Oregon City Urban Renewal Agency by E-File to the their following counsel:

John R. Barhoum, OSB No. 045150  
Email: john.barhoum@chockbarhoum.com  
Jeffery W. Hansen, OSB No. 923290  
Email: jeff.hansen@chockbarhoum.com  
Chock Barhoum LLP  
121 SW Morrison St., Suite 415  
Portland, OR 97204  
503-223-3000

DATED April 7, 2021

s/ James J. Nicita  
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